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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/724,665	12/01/2003	Mihaelos Nicholas Mihalos	KFHI-113	2414

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EXAMINER	
TRAN LIEN, THUY	
ART UNIT	PAPER NUMBER
1761	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/16/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/724,665	MIHALOS ET AL.	
	Examiner	Art Unit	
	Lien T. Tran	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 March 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-50* is/are pending in the application.

4a) Of the above claim(s) *30-50* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-29* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Applicant's election with traverse of Group I, claims 1-29 in the reply filed on 3/5/07 is acknowledged. The traversal is on the ground(s) that the apparatus as claimed is directed to making curved or plastic chips and the product cannot be formed by hand. This is not found persuasive because. The determination for a restriction requirement is not what the claimed apparatus recites but that the apparatus as claimed can be used to perform other process. The apparatus can be used with other process such as plastic because a plastic can exist as a flat piece which can be placed under the roller and the plastic is flexible which can be rolled under the roller to curve. With respect to group I and III, it is well known in the art that wafer for cream filled product is formed after baking by molding the baked pieces while they are still warm around a forming device such as stick if a tube is wanted or a cream horn mold if a cone is wanted. The curving can also be shaped by hand while the product is still warm and malleable. The product clearly does not require the apparatus as claimed to be formed.

The requirement is still deemed proper and is therefore made FINAL.

Claims 15-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 15: Lines 2, 7, terms such as " thin, crispy, flexible" are indefinite because they are relative term. What would be considered as thin, crispy and flexible. The term " chip-like" is indefinite because the scope of the claim cannot be determined. What would be considered as " chip-like"? Does it taste like a chip, look like a chip, having flavoring like a chip or what?

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 15-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over the book " The GoodCook Cookies & Crackers" in view of Gimmler et al.

The book teaches a method for making curved or wave cookie comprising the steps of forming thin, flexible cookies into a curved or wave configuration and cooling with air to set the cookies in the wave or curved configuration.

The book does not teach adding pregelatinized waxy maize starch, the temperature of the cookies, the cooling temperature, cooling on a rotating roller, the thickness, adding particulate flavoring and icing and using continuous band oven.

Gimmler et al teach a process for making snack product. They teach to add gelatinized starch to impart a longer lasting mouth feel and to increase mastication properties (see col. 2 lines 34-41, col. 9 lines 23-25)

It would have been obvious to one skilled in the art to add the pregelatinized waxy maize starch when desiring the properties taught by Gimmler et al. Since the cookies can be shaped into a curve configuration, it is obvious the cookies have the same in the range claimed. However, if they do not, it would have been within the skill of one in the art to determine the temperature at which the cookies are malleable so that they can be shaped. It would have been within the skilled of one in the art to determine the appropriate cooling temperature so that the cookies are hardened and set. It would have been obvious to make the cookies in any thickness depending on the texture desired. It would have been obvious to add flavoring and icing when desiring to enhance the flavoring to the cookies. This would have been an obvious matter of preference. It would have been obvious to cool the cookies and bake the cookies on any apparatus that is available and is deemed convenient to the setting in which the product is made. This parameter can readily be determined by one skilled in the art.

Claims 27-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cookbook in view of Gimmler et al. as applied to claims 15-26 above, and further in view of Sato.

The cookbook does not teach forming the curve or wave on a rotating roller.

Sato discloses a method for making rolled cookies by passing baked cookies pieces under a rotating roller. (see col. 1 lines 40-66)

Dawes et al (WO 96/01572) teaches forming curve or wave chip product by passing dough pieces through a gap between rollers (see page 2)

It would have been obvious to one skilled in the art to use other known apparatus in the art such as the one shown by Dawes et al to form the curve configuration when desiring to automate the step of shaping. Cookies are known to be passed under rotating roller to curve as shown by Sato.

Claims 1-6,8-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sato.

Sato discloses a method for making curved cookies. The method comprises the steps of baking dough pieces to obtain malleable baked pieces, transporting the pieces on a conveyor between the gap of the belt and a rotating roller to form the curved configuration and transporting the product on the belt downstream of the rotating roller. Once the cookies are rolled, they are conveyed to subsequent stages such as cooling and form-retaining stages. The cookies are conveyed in a hot, soft state. (see columns 1-2, col. 4 lines 65-68)

The language of the claims do not exclude other steps disclosed in Sato. The rolled up product is a curved product and has convex and concave surfaces. Sato does not disclose the cooling temperature, the temperature of the baked dough pieces and the time, the amount of sugar and adding flavoring and icing.

Since the cookies are rolled into a curve configuration, it is obvious the cookies have the same in the range claimed. However, if they do not, it would have been within the skill of one in the art to determine the temperature at which the cookies are malleable so that they can be shaped. It would have been within the skilled of one in the art to determine the appropriate cooling temperature so that the cookies are

hardened and set. It would have been obvious to add flavoring and icing when desiring to enhance the flavoring to the cookies. This would have been an obvious matter of preference. Since the Sato product is a cookie, it is obvious the dough contain wheat flour because that is the common flour for cookie. If it is not wheat flour, it would have been obvious to one skilled in the art to use wheat flour if a wheat product is wanted. It would have been obvious to use any amount of sugar depending on the type of cookies and the degree of sweetness desired.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sata in view of Gimmler et al.

Gimmler et al teach a process for making snack product. They teach to add gelatinized starch to impart a longer lasting mouth feel and to increase mastication properties (see col. 2 lines 34-41, col. 9 lines 23-25)

It would have been obvious to one skilled in the art to add the pregelatinized waxy maize starch when desiring the properties taught by Gimmler et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday, Wed-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

April 12, 2007

Lien Tran
LIEN TRAN
PRIMARY EXAMINER
Group 1700